JOHN C. KNUTSEN

IBLA 75-643 Decided January 12, 1976

Appeal from a decision by the Alaska State Office of the Bureau of Land Management rejecting Alaska Native allotment application AA 6463.

Affirmed.

1. Alaska: Native Allotments

The requirement of use and occupancy by an Applicant under the Alaska Native allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

2. Alaska: Native Allotments--Rules of Practice: Hearings

An applicant for a Native allotment does not have a right to a formal hearing before an Administrative Law Judge Hearings may be held in the discretion of the Secretary of the Interior and will not be held where it is unlikely that further evidence will result in a different conclusion.

APPEARANCES: John C. Knutsen, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On April 28, 1975, appellant's Alaska Native allotment application under the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), was rejected by the Alaska State Office, Bureau of

Land Management, because a report of field examination found no visible evidence of use and occupancy, and appellant failed to present clear and credible evidence of his entitlement to an allotment.

Appellant stated that he used the land for hunting, fishing and berrypicking during June through September from 1964 to the present. He claimed improvements consisting of a tent frame valued at $150 and an outhouse valued at $30, both constructed in 1949. The field examiner reported that these improvements were not found nor were any other visible signs of use, including those normally associated with hunting, fishing and berrypicking. There were no markings or postings of any kind on the parcel.

A letter of June 11, 1974, from the Alaska State Office informed the applicant of the findings of the field examination and of the conclusion that he had not met the use and occupancy requirements of the Alaska Native Allotment Act. Applicant was allowed 30 days from receipt of the letter in which to submit additional evidence in support of his claim, and was informed that otherwise adverse action would be taken on his application. Applicant's brief reply of June 26, 1974, furnished no information to support his claimed use and occupancy of the land.

On December 9, 1974, the Alaska State Office gave the applicant an additional 60 days within which to furnish information to support his claim. He was provided with a copy of the report of the field examination and suggested guidelines for statements of witnesses who could verify his use and occupancy of the land. He was informed that his letter of June 26, 1974, had been filed in the case file for further reference. No response was made to this notice.

Appellant argues that he has used the allotment for subsistence hunting, fishing and berrypicking in the Native way of land use. He attached witness statements of two Levelock residents--John D. Nelson and Sassa Woods--attesting to his use of the land. He also contends that the Bureau of Land Management has an affirmative duty to investigate the validity of doubtful use and occupancy of public land claimed under Native allotment applications, including a hearing if necessary to insure due process of law.

[1] The law and regulations require that, to qualify to receive an allotment, an eligible applicant must show "substantial continuous use and occupancy" of the land for a minimum period of 5 years. "Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use." 43 CFR 2561.0-5(a).

This contemplates the customary seasonality of use by the applicant of any land used by him for his livelihood and well-being and that of his family. Id.

The statements of John D. Nelson, a friend, and Sassa Woods, brother of appellant, fail to corroborate his asserted use of the land. There are significant variances between the statements made by these two witnesses and those made by appellant concerning his asserted use and occupancy of the land. Appellant claimed use of the land during June through September from 1964 to the present for hunting, fishing and berrypicking. John D. Nelson stated that appellant had used the land for hunting, fishing and woodcutting in the fall months. He also indicated that there is an old tent frame, bear trails and old meat racks on the land. On the other hand, Sassa Woods asserted that appellant had used the land in the winter months for hunting. He further said that there are trails and snowmobile trails are used in the winter. The statements are contradictory and are not convincing.

The Bureau of Land Management has no affirmative obligation to investigate an applicant's entitlement to a Native allotment. A field examination was made which revealed that no improvements, markings or postings, and no other visible signs of use of the land were found. The burden to present clear and credible evidence to establish entitlement is upon the applicant. Jack Gosuk, 22 IBLA 392 (1975); Gregory Anelon, Sr., 21 IBLA 230 (1975). Appellant has failed to present proof of his entitlement to an allotment.

[2] Applicants for Native allotments do not have a right to a formal hearing before an Administrative Law Judge. Pence v. Morton, Civil No. A74-138 (D. Alaska, April 8, 1975) appeal docketed, No. 2144, 9th Cir., May 23, 1975. The decision to hold hearings is within the discretion of the Secretary of the Interior. Hearings will not be held where it is unlikely that further evidence will result in a different conclusion. Beulah Moses, 21 IBLA 157 (1975). The request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge